

**IN THE UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MINNESOTA**

COMMODITY FUTURES TRADING COMMISSION

Plaintiff,

v.

SOVEREIGN RESOURCE MANAGEMENT, INC.,  
KEN MITRA,  
VIRGIL E. SMITH, individually and d/b/a Maximus  
Capital Consultants; and  
ANTHONY J. HEPPNER, individually and d/b/a  
J.T. Investments,

Defendants.

Civil Action No. 02-CV-1783

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF AND  
FOR CIVIL PENALTIES UNDER THE COMMODITY EXCHANGE ACT**

**I. SUMMARY**

1. The Commodity Futures Trading Commission (“Commission”) brings this action pursuant to Section 6c of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. § 13a-1 (2001), to seek preliminary and permanent injunctive relief against persons who committed fraud in connection with a commodity pool operated by defendant Sovereign Resource Management, Inc. (“Sovereign”). The Commission also seeks disgorgement of unlawfully obtained funds, restitution, a civil monetary penalty and such other ancillary equitable relief as the Court may deem necessary or appropriate under the circumstances.

2. From at least November 1997 to January 2001 (the “relevant time”), defendants, Sovereign, Ken Mitra (“Mitra”), Virgil T. Smith (“Smith”) and Anthony J. Heppner (“Heppner”), solicited individuals to invest in a Sovereign enterprise that purportedly would pool their funds and trade foreign currency futures contracts on behalf of these pool participants (“participants”). In connection with the solicitation of participants, Sovereign, Mitra, Smith and Heppner made false representations and material omissions.

3. Sovereign, Mitra, Smith and Heppner accepted and pooled at least \$1,717,777 in the aggregate from at least 97 pool participants.

4. The defendants invested only \$206,405 in pool participant funds in foreign currency futures, repaid \$281,500 to participants and misappropriated at least \$629,215 of the remaining \$1,229,872 in participant funds for their own use.

5. Sovereign and Smith issued false written statements to some pool participants.

6. Sovereign failed to register as a commodity pool operator (“CPO”) and Mitra, Smith and Heppner failed to register as associated persons (“APs”) of Sovereign, a CPO.

7. Sovereign also failed to provide pool participants with Disclosure Documents setting forth, among other things, prescribed risk disclosures and performance data.

8. The defendants have engaged, or are engaging, or are about to engage in acts and practices which constitute violations of the Commodity Exchange Act, 7 U.S.C. §§ 1 et seq. (2001) and Commission Regulations 17 C.F.R. §§ 1 et seq., thereunder.

9. Unless restrained and enjoined by this Court, all of the defendants are likely to and will continue to engage in the acts and practices as alleged against them in this Complaint, and in similar acts and practices, as more fully described below.

## **II. JURISDICTION AND VENUE**

10. This Court has jurisdiction over this action pursuant to Section 6c of the Act, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

11. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, in that the defendants are found in, inhabit, or transact business in this district, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

## **III. THE PARTIES**

12. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency which is charged with the responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 et seq., and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq.

13. Defendant Sovereign Resource Management, Inc. is a foreign corporation organized under the laws of Grenada whose address is c/o R.C. Benjamin & Co., H.A. Blaize Street, St. George's, Grenada W.I. Sovereign was incorporated on

August 7, 1997. At all relevant times, Mitra was the president of Sovereign and, at least as of the time of its incorporation, was Sovereign's sole shareholder. Sovereign has never been registered with the Commission in any capacity.

14. Defendant Ken Mitra is a Canadian citizen who resides in British Columbia. Mitra was the president of Sovereign. Mitra has never been registered with the Commission in any capacity.

15. Defendant Virgil E. Smith resides in Howard Lake, Minnesota. At various times from at least November 1997 to February 2000, Smith has sometimes done business as Maximus Capital Consultants, Inc. ("Maximus"). Neither Smith nor Maximus have ever been registered with the Commission in any capacity.

16. Defendant Anthony J. Heppner resides in Theilman, Minnesota. At various times from at least November 1997 to at least November 1998, Heppner has sometimes done business under the assumed name J. T. Investments. Neither Heppner nor J. T. Investments have ever been registered with the Commission in any capacity.

#### **IV. FACTS**

##### ***A. Statutory Background***

17. A futures commission merchant ("FCM") is defined in Section 1a(12) of the Act, 7 U.S.C. § 1a(12), as an individual, association, partnership, corporation, or trust that: (i) is engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery or on or subject to the rules of any contract market; and (ii) in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts.

18. A commodity pool is defined in Commission Regulation 4.10(d)(1), 17 C.F.R. § 4.10(d)(1), as any investment trust, syndicate or similar form of enterprise engaged in the business of investing its pooled funds in trading commodity futures and/or commodity options.

***B. Solicitations for the Sovereign Pool***

19. Commencing in approximately November 1997, Sovereign began operating a foreign currency futures trading program called the “Sovereign Resource Management Club” for the benefit of its “members.” Sovereign accepted participants’ funds in a single bank account at the National Commercial Bank of Grenada, Ltd. (“NCB”) in Grenada, W.I. for the purported purpose of investing in foreign currency futures contracts on the Chicago Mercantile Exchange.

20. From at least November 1997 until at least September 1999, the defendants solicited at least 97 participants to invest in the Sovereign commodity pool, most of who reside in Minnesota. Individual participants invested varying amounts, ranging from at least \$1,000 to \$252,000 and participated in one of two so-called “Phases” of the investment program.

21. While soliciting pool participants, Mitra and Sovereign made the following false oral or written representations to participants and potential participants:

(a) 60% of each participant’s funds would be invested in foreign currency contracts;

(b) the remaining 40% of each participant’s funds would be held in reserve to “minimize potential losses;”

(c) participant funds could be withdrawn from the currency trading program after the expiration of 90 days (for Phase I participants) plus a minimum of 30 days for processing the withdrawal; and

(d) participant funds could be withdrawn from the currency trading program after the expiration of 12 months (for Phase II participants) plus a minimum of 30 days for processing the withdrawal.

22. Defendant Heppner made the additional false oral or written representation to participants and potential participants that participants' projected profits were 52% per month.

23. Defendant Mitra made the additional false oral or written representation to participants and potential participants that the value of pool participants' accounts had doubled in a single month of trading.

24. Defendant Smith made the additional false oral or written representations to participants and potential participants that:

(a) Smith's personal investment in Sovereign was doing so well that he was purchasing several homes and he had personally made millions of dollars;

(b) pool participants had achieved a 4:1 return of profits from their investments and the Sovereign trader was achieving a 50:1 profit ratio for the fund;

(c) Sovereign Phase I participants had achieved a 30% monthly rate of return;

(d) Sovereign Phase II participants would achieve an 18% monthly return on their investment; or

(e) a group of Sovereign participants had already received \$1 million as a result of their Sovereign investment.

25. The defendants knew or recklessly disregarded the fact that the representations set forth in paragraphs 21 through 24 were false.

***C. Sovereign's and Mitra's Misappropriation of Participant Funds and False Statements***

26. Defendants instructed potential pool participants to complete a "Sovereign Currency Trading Program Request to Participate Application" ("Application"), which delineated the terms and conditions of their participation in the program. The Application also included specific wire instructions for the participants to send their funds to Sovereign's bank account at NCB.

27. Most participants transmitted their pool investment by wire to the Sovereign bank account at NCB in Grenada, though some participants gave cash directly to Mitra.

28. In November 1997, Mitra, on behalf of Sovereign, opened a futures trading account under the name "Sovereign Resource Management, Inc." at an FCM called Professional Market Brokerage, Inc. ("PMB") located in Chicago, Illinois.

29. In connection with this account at PMB, Sovereign retained John Blitz ("Blitz"), who conducted the trading of the Sovereign account at PMB.

30. Sovereign made several deposits into the futures trading account at PMB totaling \$206,405, which came from the NCB bank account. From February 1998 until March 1999, the account actively traded futures and lost a cumulative total of \$142,855. The account also paid an additional \$50,548 in broker fees and commissions to PMB and its AP and another \$15,000 to Blitz for management fees, leaving a deficit balance of \$1,998 when the account was closed in April 1999.

31. On information and belief, Sovereign has not made deposits of any Sovereign pool participant funds into any futures trading accounts other than the account at PMB referred to in paragraphs 28 through 30 above and the Sovereign pool has not engaged in any futures trading since March 1999.

32. Defendant Mitra falsely represented to pool participants that their Sovereign investments were profitable.

33. Defendant Sovereign periodically sent written statements, called Currency Trade Statements, to pool participants that:

- (a) falsely reported trading profits;
- (b) concealed trading losses; and
- (c) misrepresented the value of each participant's interest in the pool.

34. Sovereign knew that the representations described in paragraph 33 were false.

35. In May 1999, Mitra mailed a notice to pool participants advising them that installment repayments of their investments would begin in June or July 1999 and periodic payments would thereafter be made at 45-day intervals until all of their investments were repaid.

36. In September 1999, Mitra mailed a notice to pool participants advising them that there was a "problem in retrieving the investments" but that details could not be disclosed due to legal ramifications. However, Mitra advised the pool participants that Sovereign was "attempting to return the initial investments shortly" and, furthermore, that "profits accrued on the investment would be disbursed as promised on the agreement once these matters are resolved."

37. As recently as mid-2001, Mitra told a pool participant that the entire investment had not gone well and that his investments were, for the moment, “tied up.”

38. Although some pool participants have made oral or written requests to Mitra and others associated with Sovereign for a return of their Sovereign investment, they have not been repaid.

39. Mitra and Sovereign misappropriated at least \$483,840 from Sovereign participants, who sought repayment but have not been repaid, and may have misappropriated up to \$1,084,497 from Sovereign participants.

***D. Smith’s Misappropriation of Participant Funds and False Statements***

40. Smith accepted at least \$170,000 from two participants and may have accepted an additional an additional \$375,420 from as many as 25 more pool participants for participation interests in Sovereign.

41. In some instances, Smith told pool participants that their funds would be sent to Sovereign through his firm, Maximus.

42. After soliciting funds to purportedly be used for trading foreign currency futures, Smith deposited and commingled at least the \$170,000 he accepted from the two pool participants into a bank account under the name “Virgil E. Smith” at TCF National Bank Minnesota at Minneapolis, Minnesota. Smith forwarded \$59,700 of the \$170,000 sum to Sovereign.

43. Smith misappropriated at least \$110,300 of participant funds for his own use. Smith also paid purported profits to certain pool participants that were actually investments from later participants, in a manner akin to a Ponzi scheme.

44. Defendant Smith orally represented to pool participants that the Sovereign investments were profitable.

45. Defendant Smith periodically sent written statements under the name Maximus to at least one pool participant that:

- (a) falsely reported trading profits;
- (b) concealed trading losses; and
- (c) misrepresented the value of each participant's interest in the pool.

46. Smith knew that the representations described in paragraphs 44 and 45 were false.

47. As recently as mid-2001, Smith falsely advised pool participants that although the pool had experienced difficulties they should soon expect a full return of their investment.

48. Although some participants have made oral or written requests to Smith for a return of their Sovereign investments, they have not been repaid.

***E. Heppner's Misappropriation of Participant Funds and False Statements***

49. After soliciting funds to be purportedly used for trading foreign currency futures, Heppner accepted and deposited at least \$114,750 from at least 30 pool participants into one of the following bank accounts: "Tony Heppner or Joyce Heppner" account at the First National Bank in Plainview, Minnesota, "Anthony J. Heppner or Joyce V. Heppner" account at the Marquette Bank Rochester NA in Rochester, Minnesota or the "JT Investments" account at the Marquette Bank Rochester NA in Rochester, Minnesota.

50. Heppner accepted funds from some Sovereign participants under the name J. T. Investments.

51. Heppner only forwarded approximately \$79,675 of participant funds to Sovereign.

52. Heppner commingled and misappropriated for his own use the remaining \$35,075 of participant funds.

53. Defendant Heppner orally represented to pool participants that the Sovereign investments were profitable.

54. Heppner knew that the representations referred to in paragraph 53 were false.

55. As recently as October 2001, Heppner told one Sovereign participant that he would repay him part of his Sovereign investment, but did not.

56. Although some participants have made oral and written requests to Heppner for a return of their Sovereign investments, they have not been repaid.

**V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND THE  
REGULATIONS PROMULGATED THEREUNDER**

**COUNT ONE**

**VIOLATIONS OF SECTIONS 4b(a)(i) and (iii) of the ACT:  
FRAUD BY MISAPPROPRIATION AND MISREPRESENTATION**

57. Paragraphs 1 through 56 are re-alleged and incorporated herein.

58. During the relevant time, the defendants violated Sections 4b(a)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(i) and (iii), in that they cheated or defrauded or attempted to cheat and defraud and willfully deceived or attempted to deceive participants or prospective participants by, among other things:

- (a) misappropriating funds received from participants and using them for personal expenses or to repay earlier participants;
- (b) misrepresenting to participants that their funds were being used to trade commodity futures when some funds were not so used;
- (c) misrepresenting the prior success of Sovereign participants to prospective participants;
- (d) misrepresenting to participants that they could withdraw funds from their investment after the expiration of 90 days (for Phase I participants) or 12 months (for Phase II participants); and
- (e) omitting the report of losses and misrepresenting to participants the profits and value of each participant's interest in the pools.

59. The defendants engaged in this conduct in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof.

60. Mitra, directly or indirectly, controlled Sovereign and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Sovereign's violations alleged in this Count. Consequently, in addition to being primarily liable for the violations outlined in paragraph 58, pursuant to Section 13(b) of the Act, 7 U.S.C.

§ 13c(b), Mitra is also liable for Sovereign's violations of Sections 4b(a)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(i) and (iii) as a controlling person.

61. Each material misrepresentation or omission and each willful deception made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(i) and (iii) of the Act.

## **COUNT TWO**

### **VIOLATIONS OF SECTION 4b(a)(ii) OF THE ACT: PROVIDING FALSE STATEMENTS TO PARTICIPANTS**

62. Paragraphs 1 through 56 are re-alleged and incorporated herein.

63. During the relevant time period, Sovereign violated Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii), in that it willfully made or caused to be made false reports or statements by preparing and issuing false trading account statements to pool participants. These statements misrepresented profits, omitted losses and overstated the value of each participant's interest in the pool.

64. During the relevant time period, Smith violated Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii), in that he willfully made or caused to be made false reports or statements by preparing and issuing false trading account statements to pool participants. These statements, issued by Smith under the name Maximus, misrepresented profits, omitted losses and overstated the value of each participant's interest in the pool.

65. Sovereign and Smith engaged in the conduct set forth above in paragraphs 62 through 64, in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of other persons where such contracts for future delivery were or may have been used for (a) hedging any

transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof.

66. Mitra, directly or indirectly, controlled Sovereign and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Sovereign's violations alleged in this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Mitra is thereby liable for Sovereign's violation of Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii) as a controlling person.

67. Each false report or statement made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(ii) of the Act, 7 U.S.C. § 6b(a)(ii).

### **COUNT THREE**

#### **VIOLATIONS OF SECTION 4m(1) OF THE ACT: FAILURE TO REGISTER AS A COMMODITY POOL OPERATOR**

68. Paragraphs 1 through 56 are re-alleged and incorporated herein.

69. A CPO is defined in Section 1a(5) of the Act, 7 U.S.C. § 1(a), as any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market.

70. With certain specified exceptions and exemptions, not applicable here, all CPOs are required to be registered with the Commission, pursuant to Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (1994).

71. During the relevant time, Sovereign engaged in a business that was of the nature of an investment trust, syndicate, or similar form of enterprise by soliciting, accepting and receiving at least \$1.7 million from pool participants for the purpose of trading commodity futures.

72. In connection with the conduct described above in paragraphs 1 through 56, Sovereign used the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as a CPO.

73. Defendant Sovereign engaged in these activities without the benefit of registration as a CPO, in violation of Section 4m(1) of the Act.

74. Mitra, directly or indirectly, controlled Sovereign and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Sovereign's violations alleged in this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Mitra is thereby liable for Sovereign's violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

75. Each use of the mails or any means or instrumentality of interstate commerce in connection with defendant Sovereign's business as a CPO without proper registration during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of the Act.

## **COUNT FOUR**

### **VIOLATIONS OF SECTION 4k(2) OF THE ACT: ACTING AS AN AP OF A CPO WITHOUT BENEFIT OF REGISTRATION**

76. Paragraphs 1 through 56 are re-alleged and incorporated herein.

77. An AP of a CPO is defined in Commission Regulation 1.3(aa)(3) as any natural person who is associated with a commodity pool operator as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions) in any capacity which involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged.

78. Section 4k(2) of the Act, 7 U.S.C. § 6k(2), makes it unlawful for any person to associate with a CPO as a partner, officer, employee, consultant or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves: (i) the solicitation or acceptance of customers' orders, discretionary accounts, or participation in a commodity pool; or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under the Act as an AP of such CPO and such registration has not expired, been suspended or revoked.

79. During the relevant time, Mitra, Smith and Heppner solicited funds for participation in the pool, without the benefit of registration as APs of Sovereign, in violation of Section 4k(2) of the Act.

80. Each solicitation of funds for participation in the pool by Mitra, Smith or Heppner during the relevant time period, is alleged as a separate and distinct violation of Section 4k(2) of the Act.

## **COUNT FIVE**

### **VIOLATIONS OF SECTIONS 4o(1)(A) and (B) OF THE ACT: FRAUD BY A CPO AND BY AN AP OF A CPO**

81. Paragraphs 1 through 56 are re-alleged and incorporated herein.

82. During the relevant time, defendant Sovereign, while acting as a CPO, and defendants Mitra, Smith and Heppner, while acting as APs of Sovereign, violated Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B), in that they: (A) directly or indirectly employed one or more devices, schemes, or artifices to defraud pool participants or prospective pool participants, and (B) engaged in transactions, practices or courses of business which operated as a fraud or deceit upon pool participants or prospective pool participants by, among other things:

- (a) misappropriating funds received from participants and using them for personal expenses or to repay earlier participants;
- (b) misrepresenting to participants that their funds were being used to trade commodity futures when some funds were not so used;
- (c) misrepresenting the prior success of Sovereign participants to prospective participants;
- (d) misrepresenting to participants that they could withdraw funds from their investment after the expiration of 90 days;
- (e) misrepresenting to participants that after the expiration of one year that an IBC would be set up and that an international credit card would be made available to each individual participant to facilitate the withdrawal of their Sovereign investment; or

(f) omitting the report of losses and misrepresenting to participants the profits and value of each participant's interest in the pools.

83. Such acts and omissions were effected by use of the mails or other means or instrumentalities of interstate commerce.

84. Mitra, directly or indirectly, controlled Sovereign and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Sovereign's violations alleged in this Count. Consequently, in addition to being primarily liable for the violations outlined in paragraph 82, pursuant to Section 13(b) of the Act, 7 U.S. C. § 13c(b), Mitra is also liable for Sovereign's violations of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B) as a controlling person.

85. Each material misrepresentation or omission, each act of misappropriation and each false report or statement made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1) (A) and (B).

## **COUNT SIX**

### **VIOLATIONS OF REGULATION 4.21: FAILURE TO PROVIDE POOL DISCLOSURE DOCUMENTS**

86. Paragraphs 1 through 56 are re-alleged and incorporated herein.

87. Defendant Sovereign was required to register as a CPO with the Commission before soliciting participants to contribute to the Sovereign commodity pool.

88. Regulation 4.21(a), 17 C.F.R. § 4.21(a), prohibits anyone who is registered or should be registered as a CPO from soliciting a prospective participant without first delivering or causing to be delivered to the prospective participant a

Disclosure Document containing the information required by Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25.

89. A Disclosure Document must contain the information set forth in Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25, including risk disclosures and performance data, such as the pool's actual performance since its inception, the performance of any other pools operated by the CPO, and the performance of any other accounts traded by the CPO.

90. Defendant Sovereign violated Regulation 4.21, 17 C.F.R. § 4.21, in that, during the relevant time, it, directly or indirectly, solicited potential pool participants without first delivering or causing to be delivered to each a Disclosure Document accurately containing the information required by Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25.

91. Mitra, directly or indirectly, controlled Sovereign and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Sovereign's violations alleged in this Count. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Mitra is thereby liable for Sovereign's violations of Regulation 4.21, 17 C.F.R. § 4.21.

92. Each time that Sovereign solicited a prospective pool participant without first providing such prospective participant with a Disclosure Document accurately containing the information required by Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 4.21, 17 C.F.R. § 4.21.

## **VI. RELIEF**

Wherefore, the plaintiff respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own equitable powers:

### **A. Find:**

1. Sovereign, Mitra, Smith and Heppner violated Sections 4b(a)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(i) and (iii);
2. Sovereign, Mitra and Smith violated Section 4b(a)(ii) of the Act, 7 U.S.C. § 4b(a)(ii);
3. Sovereign and Mitra violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1);
4. Mitra, Smith and Heppner violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2);
5. Sovereign, Mitra, Smith and Heppner violated Section 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B); and
6. Sovereign and Mitra violated Regulation 4.21, 17 C.F.R. § 4.21.

B. Enter orders of preliminary and permanent injunction restraining and enjoining the defendants Sovereign, Mitra, Smith and Heppner, and all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, attorneys of Sovereign, Mitra, Smith and Heppner and all persons insofar as they are acting in active concert or participation with Sovereign, Mitra, Smith and Heppner who receive actual notice of this order by personal service or otherwise, from directly or indirectly:

1. Cheating or defrauding or attempting to cheat or defraud, or willfully deceiving or attempting to deceive, other persons, in or in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made, or to be made, for or on behalf of other persons where such contracts for future delivery were or could have been used for (A) hedging any transaction in interstate commerce in such commodities or the products or byproducts thereof, or (B) determining the price basis of any transaction in interstate commerce in such commodities, or (C) delivering any such commodities sold, shipped, or received in interstate commerce for the fulfillment thereof, in violation of Section 4b(a)(i) and (iii), 7 U.S.C. § 6b(a)(i) and (iii); and

2. While operating as a CPO or an AP of a CPO, employing any device, scheme, or artifice to defraud any participant or client or prospective client or participant, or engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or prospective participant, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, in violation of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B).

C. Enter an order of permanent injunction enjoining the defendants Sovereign, Mitra and Smith, and all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, attorneys of Sovereign, Mitra and Smith, and all persons insofar as they are acting in active concert or participation with Sovereign, Mitra and Smith, who receive actual notice of this order by personal service or otherwise, from directly or indirectly, willfully making or causing to be made to such other person any false report or statement thereof, in violation of Section 4b(a)(ii) of the Act, 7 U.S.C.

§ 6b(a)(ii).

D. Enter an order of permanent injunction enjoining the defendants Sovereign and Mitra, and all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, attorneys of Sovereign and Mitra, and all persons insofar as they are acting in active concert or participation with Sovereign and Mitra, who receive actual notice of this order by personal service or otherwise, from directly or indirectly operating as a CPO engaged in the business of soliciting, accepting, or receiving from others, funds, securities, or property, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market without being registered with the Commission as a commodity pool operator, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

E. Enter an order of permanent injunction enjoining defendants Mitra, Smith and Heppner, and all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, attorneys of Mitra, Smith and Heppner, and all persons insofar as they are acting in active concert or participation with Mitra, Smith and Heppner, who receive actual notice of this order by personal service or otherwise, from directly or indirectly acting as a partner, officer, employee, consultant, or agent (or any person occupying a similar status) of a CPO in any capacity that involves (i) the solicitation of funds, securities or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged, without being registered with the Commission as an AP of the CPO, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2).

F. Enter an order of permanent injunction enjoining defendants Sovereign and Mitra, and all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, attorneys of Sovereign and Mitra, and all persons insofar as they are acting in active concert or participation with Sovereign and Mitra, who receive actual notice of this order by personal service or otherwise, from directly or indirectly failing to deliver to prospective pool participants a Disclosure Document providing the information required by Regulations 4.24 and 4.25, 17 C.F.R. §§ 4.24 and 4.25, in violation of Regulation 4.21.

G. Enter an order requiring Sovereign, Mitra, Smith and Heppner, to disgorge all benefits received from acts or practices that constitute violations of the Act as described herein, including prejudgment and post-judgment interest.

H. Enter an order directing Sovereign, Mitra, Smith and Heppner, to make restitution for harm proximately caused by their violations of provisions of the Act, as described herein, including prejudgment and post-judgment interest.

I. Enter an order requiring the defendants to pay civil penalties under the Act, to be assessed by the Court, in amounts not more than the higher of \$110,000 for violations committed after November 27, 1996 and before October 23, 2000, or \$120,000 for violations committed on or after October 23, 2000, or triple the monetary gain to defendants, for each violation of the Act and Regulations.

J. Enter an order requiring defendants to pay costs and fees permitted by 28 U.S.C. §§ 1920 and 2412(a)(2).

K. Enter such other orders for equitable relief as the court may deem necessary or appropriate under the circumstances.

Dated: July 18, 2002

Respectfully submitted,

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